

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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BRAINWAVE SCIENCE, INC.

Plaintiff,

- against -

21-cv-4402 (BMC)

ARSHEE, INC., DR. LAWRENCE A.  
FARWELL, DR. THIERRY MAISON and  
BRAIN FINGERPRINTING FOUNDATION

Defendants.

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**Tushar Kendre**, pursuant to 28 U.S.C. §1746 declares under penalty of perjury that the following is true and correct:


1. I am a graduate of the Indian Institute of Technology Kanpur. I have substantial training and experience in Machine Learning and Artificial Intelligence systems as well as Programming in languages including C, C++, C#, Java, Python, MATLAB, JavaScript, NodeJS, ExpressJS, ElectronJS, Arduino, ATmega and CAD.
2. Since 2019, I have been employed as a Coder/Programmer, Machine Learning and Artificial Intelligence Expert for Brainwave Science, Inc.

3. I am fully familiar with Brainwave Science, Inc.'s source code (now referred to as iCognitive®). I regularly make revisions and modifications to our source code in the course of my work duties for my employer.
4. As with the vast majority of programs, our Brainwave Science's source code does include portions of code which are "open source". The term "open source" is a term of art used, within the programming community, to describe code which is available to the general public for use or modification from its initial design. While "open source" code is free to use, the code remains the property of the code owner. A programmer's use of the "open source" code is governed by a published license.
5. I have been provided with and have reviewed portions (§§21-23) of the affidavit of Dr. Thierry Maison (ECF 24-2).
6. Dr. Maison states that he "found the entire BWS source code in a publicly accessible directory with a Google search." (ECF 24-2 §21). At the outset, I would note that the fact that source code is "publicly accessible" does not mean that the source code is "open use". In any event, at the request of my employer, I conducted my own Google search for the BWS source code. I was not able to locate our source code on any known publicly accessible directory.
7. Dr. Maison further states that "The Proprietary portion of BWS software was deleted and replaced with [Defendants'] development..." (ECF 24-2 §22). In order for a programmer to reliably remove all non-open-source code from a compilation of code, he or she would necessarily need to compare the compilation with all known open-source code. Achieving this

within the present case would require a comparison of the 750,000+ lines of code in question against all known open-source code. While this is theoretically possible, it is highly improbable that this could be reliably accomplished.

**Pursuant to 28 U.S. Code § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.**

Executed on 11/19/2021



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